

ARKANSAS SUPREME COURT

No. CR 98-1167

NOT DESIGNATED FOR PUBLICATION

RICKY LEE SCOTT
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered October 12, 2006

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR *CORAM NOBIS*
[CIRCUIT COURT OF CROSS
COUNTY, CR 96-61]

PETITION DENIED

PER CURIAM

In 1998, a jury found petitioner Ricky Lee Scott guilty of murder in the first degree and sentenced him to life imprisonment in the Arkansas Department of Correction. This court affirmed the judgment. *Scott v. State*, 337 Ark. 320, 989 S.W.2d 891 (1999). Petitioner has previously filed other requests for postconviction relief, none of which were ultimately successful. *See Scott v. State*, 355 Ark. 485, 139 S.W.3d 511 (2003); *Scott v. State*, CR 06-10 (Ark. January 26, 2006) (*per curiam*). Now before us is petitioner's *pro se* petition requesting this court to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis*.¹ The petition for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error *coram nobis* after a judgment has been affirmed on appeal only after we grant permission.

¹For clerical purposes, the instant petition to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis* was assigned the same docket number as the direct appeal of the judgment.

Dansby v. State, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*).

Petitioner asserts grounds for reinvesting jurisdiction in the trial court because he claims that the prosecution withheld material evidence as follows: (1) information concerning the termination of one of the investigating officers, Roger Speer; (2) certain prosecution file notes concerning the caliber of the bullet removed from the victim, a release form and a shell casing that was found; (3) notes taken by another investigating officer, Curtis Swan; (4) a statement made by Tommy Haskin concerning petitioner's presence at his house the night of the shooting; (5) an Arkansas State Crime Laboratory form showing that certain clothing was submitted for testing. Petitioner asserts that this evidence could have been used by the defense to challenge the State's case against him.

A writ of error *coram nobis* is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*). We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts*, 336 Ark. at 583, 986 S.W.2d at 409. *Coram nobis* proceedings are attended by a strong presumption that the judgment of conviction is valid. *Echols v. State*, 360 Ark. 332, ___ S.W.3d ___ (2005).

Petitioner asserts a violation of the right to due process as guaranteed by *Brady v. Maryland*, 373 U.S. 83 (1963). As a part of our review of a decision on a petition for writ of error *coram nobis* that makes such a claim, we determine whether there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the claimed

exculpatory evidence been disclosed at trial. *See Larimore*, 341 Ark. at 408, 17 S.W.3d at 94. Even if petitioner were able to show that the prosecution withheld the evidence as asserted, he has not made a showing as to how the disclosure of that evidence could have prevented rendition of the judgment of conviction. We cannot say that he has stated facts so as to justify reinvesting jurisdiction in the trial court to consider a petition for writ of error *coram nobis*.

While petitioner asserts that the evidence would have changed the outcome of his trial, he presents no basis by which to support that claim. The court is not required to accept at face value the allegations of the petition. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)). The mere naked allegation that a constitutional right has been invaded will not suffice and an application should make full disclosure of specific facts, rather than merely state conclusions as to the nature of such facts. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004).

Petitioner does point to specific documents that he asserts were withheld. However, as to the exculpatory nature of those documents, petitioner merely alleges that the materials that were claimed withheld could be used to impeach some of the witnesses. Petitioner acknowledges that not all of the materials he claims were withheld would have been admissible, although he argues that the documents could have led to the discovery of other evidence. Counsel did unsuccessfully attempt at trial to discredit the witnesses on the same issues that petitioner raises here. While the documents may have been useful and possibly aided the defense, we cannot say that this additional evidence would have been any more persuasive.

Petitioner has not stated facts that support his allegation that the evidence he claims was withheld could have been exculpatory. He has provided no basis for a determination that there

would be a reasonable probability that the judgment of conviction would not have been rendered, and, therefore, failed to show good cause to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis*. Accordingly, we deny his petition.

Petition denied.